

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4722 of 1983

with

SPECIAL CIVIL APPLICATION No 5803 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N U MODI & ANOTHER

Versus

STATE OF GUJARAT & ANOTHER

Appearance:

1. Special Civil Application No. 4722 of 1983
MR JT TRIVEDI for Petitioner
MR NN PANDYA for Respondent No. 1, 2
2. Special Civil Application No. 5803 of 1984
MR MM JADEJA for Petitioner
MR NN PANDYA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. In Special Civil Application No.4722 of 1983, the petitioner initially prayed for quashing and setting aside the reversion order and restraining the respondents from reverting him from the post of Assistant Director of training. The next prayer has been made for issuance of the direction to the respondents to treat the petitioner as possessing the second class diploma in Engineering and further directing them to treat him as fulfilling the educational qualification prescribed for appointment to the post of Inspector of Technical Education and Assistant Director of Training. A further prayer has been made for direction to the respondents to consider the promotion of the petitioner to the post of Inspector of Technical Education and Assistant Director of training as regular and in consonance with the recruitment rules. This petition has been filed by the petitioner before this Court on 22nd September, 1983, and notice was issued on 23rd September, 1983 and status-quo to be maintained till next date has been ordered. Rule was issued on 2-12-1983 and status-quo was ordered to be continued. This Special Civil Application was ordered to be heard with Special Civil Application No.1490 of 1980. The status-quo order which has been made by this Court continues for all these years. It appears that after getting the aforesaid order, the petitioner filed an application for the amendment of this Special Civil Application which amendment has been allowed by this Court on 23rd November, 1983. The order of reversion, annexure 'F' has been filed and the prayer has been made for the quashing and setting aside of the order of reversion. The order of reversion of the petitioner is dated 21st September, 1983 i.e. earlier to the filing of this Special Civil Application. I fail to appreciate the way in which the petitioner has come up before this Court. This device which has been adopted by the petitioner not to receive the order of reversion, not to file the order of reversion and to make a prayer for quashing of the same is difficult to appreciate.

2. In Special Civil Application No.5803 of 1984, the prayer made by the petitioner is that the respondent may be directed to consider his case for promotion to the post of Inspector of Technical Education. The further direction has been sought for giving him the consequential benefits.

3. The Special Civil Application No.1490 of 1980 has been decided by this Court on 25th January, 1991. The papers of this Special Civil Application No.1490 of 1980

have been produced alongwith these two matters.

4. In the Special Civil Application No.4722 of 1983 the reply has been filed by the respondent, but no reply to the Special Civil Application No.5803 of 1984 has been filed. The reversion of the petitioner in Special Civil Application No.4722 of 1983 has been made on the ground that he does not possess the requisite qualification laid down for the post of Inspector of Technical Education or assistant Director of Training, Class I Gazetted post. It is not in dispute that both the petitioners are possessing to their credit, diploma in electrical engineering. The petitioners have made a further grievance that when they were promoted, there were no finalised or sanctioned recruitment rules for appointment by promotion to the post of Inspector of Technical Education or Assistant Director of Training. The rules have been framed subsequently and the qualifications which had been laid down under the rules could not have been made applicable to them. The rules which have been framed have been produced at annexure 'D' in one of the petition. One of the qualification prescribed for the post of Inspector of Technical Education by promotion is a second class diploma in Mechanical or Electrical or Mechanical and Electrical or Automobile Engineering of a recognised institution and about 8 years teaching or professional experience, or both, of which about 5 years shall be as a Superintendent of technical High School or an equivalent experience in an administrative capacity in class II post. The percentage of the petitioner N.U. Modi in the diploma in Engineering was 47.1%, and the percentage of petitioner Anopsinh Kanubha Jadeja in the diploma in Engineering was 44%. Their diplomas were not considered in second division. Precisely that question has been considered by this Court in the Special Civil Application No.1490 of 1980. The petitioners have come up with a case that the respondent-Government has relaxed the requirement of possessing second class in diploma in Engineering in respect of Shri Yadav, Shri G.C. Joshi and Shri D.J. Mehta. The petitioner further states that this court has also directed the respondents to relax the requirement of second class diploma in Engineering in respect of Shri C.M. Trivedi though he was possessing less than 45% of marks. The petitioners on the parity of the reasoning states that they are entitled to the relaxation of recruitment rules and they should also be considered as possessing the requisite educational qualification of diploma in engineering for promotion to the post in question. The further reference has been made to the case of Mr. R.K. Sonegra, who is at present holding the post of Inspector of Technical Education,

that Shri Sonegra also does not have second class in the final examination of Diploma in Engineering. In the reply to the writ petition, the respondent has admitted that Mr. R.K. Sonegra and Shri Modi did not possess the second class in diploma Engineering. So far as the cases of Shri Yadav, Shri Joshi, Shri Mehta and one Mr. Trivedi is concerned, it is admitted that these persons were also not possessing the second class in diploma engineering. The justification given for their promotion by relaxation of educational qualification in the reply of the writ petition is required to be referred. The respondents have come up with a case that the aforesaid persons have been promoted as a very special case, provided they were otherwise eligible for promotion, after obtaining the prior concurrence of the Gujarat Public Service Commission, as relaxation of rule was entailed in their cases. The reference has also been made to the Government letter, Education Department dated 10th August, 1972.

5. Earlier this Court in Special Civil Application No.1351 of 1976 decided on 28th November, 1979 dealing with the submissions of the petitioner therein has observed as under:

Coming to the second prong of attack put-forward by the petitioner in this petition, I find that the petitioner has some case. As many as three persons set out above, namely Shri B.P. Jadav, G.C. Joshi and D.J. Mehta had been promoted to the said Cl. II post of a Lecturer in polytechnic, even though they did not possess a diploma in second class. In other words, they are on par with the petitioner. If the Government relaxed these departmental instructions contained in General Circular No.64 in their case, there is no reason why the Government should not do so in the case of the petitioner. The Government, however, has tried to justify this different treatment on the ground that these three persons, who had no secured 50% of the marks, but had secured 45% or more marks, were declared to have procured the diploma examination with third class, because at the time they procured the diploma, the minimum percentage required for the second class was 50%. The Government's explanation is that thereafter the standards came to be lowered and those who procured 45% of marks also were declared to have passed the diploma examination with second class. The Government, therefore, reviewed their cases

and treated them as second class diploma-holders and selected them for promotional post with the approval of the Gujarat Public Service Commission as is evident from Annexure III appended to the Government's affidavit. This explanation does, however, sound reasonable. Those three persons cannot be said to have procured the diploma in second class when they had procured the same. Subsequent reduction of the standard cannot be retrospectively applied to their advantage. It is therefore, evident that in the year 1976, when the petitioner made a representation, the Government should have considered the petitioner's case also on the line on which they considered the case of those three persons and if otherwise found fit, should have forwarded his case for the approval of the Gujarat Public Service Commission as they had done in the case of those three persons.

This Court in Special Civil Application No.1490 of 1980 on 25th January, 1991 observed as follows:

On the above observations, Mr. Anand submits that the respondent nos. 1 & 2 have accepted diploma-holder with 45% of marks or more marks as person holding diploma in second class, and accordingly, the petitioner ought to have been considered for the post of Superintendent and Principal-C1.II. It appears that the respondent nos.1 & 2 have, by issuing circular, relaxed the requirement of second class diploma so as to mean a person holding diploma with 45% of marks or above. In fact, based on said relaxation promotion was given to the petitioner and it appears that number of other persons are also promoted by treating persons holding diploma with 45% of marks or more as second class diploma-holders. In that view of the matter, there was no justification on the part of respondents no.1 & 2 in not promoting the petitioner when respondent nos.3 & 4 were promoted to the post of Superintendent and when they were promoted to the post of Principal-C1.II. Supersession of petitioner by respondents no.3 and 4 is thus clearly violative of Art.14 of the Constitution of India since the respondents no.1 & 2 did not apply the relaxation in the case of the petitioner which was applied by them in the case of other employees. Petitioner should have been treated as a person

with second class diploma because of subsequent relaxation in qualification. This petition, therefore, shall have to be allowed in so far as the petitioner seeks higher post with deemed date of promotion with effect from which persons junior to him were promoted. Question is whether the petitioner can claim any seniority or atleast deemed date of promotion, vis-a-vis, respondent no.5 who came to be directly recruited to the post of Principal-C1.II on 1st November, 1980 and to the post of Principal-C1.I with effect from 20th October, 1983. It is not known as to whether he was recruited in the quota of direct recruits. If vacancy at the relevant time was only in the quota of direct recruits his appointment being prior in point of time to the petitioner cannot entitle the petitioner to deemed date of promotion over respondent no.5. If the respondent no.5 was not appointed as against the vacancy of direct recruits the question shall have to be considered by the authority as to whether the petitioner should be given deemed date of promotion above the respondent no.5.

The petitioner in Special Civil Application No.4722 of 1983 has been given the promotion leaving apart the question whether the rules were applicable or not. The counsel for the respondent has failed to justify why in the case of the petitioner in this Special Civil Application, the relaxation of qualification has not been made. No reason whatsoever has been given by the respondent to justify this discriminatory treatment. In Special Civil Application No.5803 of 1984, the petitioner therein has not been given the promotion. The petitioner has made a case of discrimination and the respondents are unable to give out any justification whatsoever in this respect, even reply has not been filed.

6. In the result, both these Special Civil Applications succeed in part. It is hereby directed to the respondents to consider the case of petitioner Shri N.U. Modi in Special Civil Application No.4722 of 1983 for relaxation of his qualification for promotion. While dealing with this matter, the respondents shall take into consideration the fact that in the cases of other persons named in this Special Civil Application, the qualification has been relaxed, and secondly, the petitioner is working on the promoted post for all these years though may be under the stay order of this court.

7. Similarly, the case of petitioner Anopsinh Kanubha Jadeja be considered for relaxation of qualification for promotion, and in case, the qualifications are relaxed in his case, he may be given all the consequential benefits following thereof which includes the deemed date of promotion. The respondents are directed to consider this matter within a period of three months from the date of receipt of certified copy of this order and pass the necessary order. The respondents , in the cases of petitioners, do not accept to relax the qualification of petitioners for promotion then a reasoned order may be passed and a copy of the same may be sent to the petitioners by registered post. The interim relief granted by this Court in Special Civil Application No.4722 of 1983 shall continue till the matter is decided by the respondents as directed above. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-